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EEOC v. PVNF, L.L.C., d/b/a Chuck Daggett Motors and Big Valley Auto

Judge John E. Conway

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EEOC v. PVNF, L.L.C., d/b/a Chuck Daggett Motors and Big Valley Auto

Keywords

EEOC, PVNF L.L.C., Chuck Daggett Motors and Big Valley Auto, CIV-03-991 JC/WDS (ACE), Consent Decree, disparate treatment, hostile work environment, constructive discharge, female, sex, automotive, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

APR 26 2004

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

PVNF, L.L.C., d/b/a Chuck Daggett Motors and
Big Valley Auto

Defendant.

CIV-03-991 JC/WDS (ACE)

**CONSENT DECREE
PERTAINING TO CHARGING
PARTY TAMMY HULCE,
CLAIMANT MICHELLE REID
AND PREGNANCY CLASS
ONLY**

This matter came before the Court upon the agreement of the parties to enter into a consent decree for purposes of settling the claims of pregnancy discrimination brought by the United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") against PVNF, L.L.C., d/b/a Chuck Daggett Motors and Big Valley Auto (Defendant) on behalf of Charging Party Tammy Hulce, class member Michelle Reid and any other potential claimants or class members. This Decree is intended to only resolve the claims described in Paragraph 9 of the Commission's Complaint relating specifically to Ms. Hulce, Ms. Reid and any EEOC claims of class pregnancy discrimination that EEOC could have brought against Defendant as a result of its investigation of Tammy Hulce's charge.

The Commission filed this action against Defendant to enforce Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, and Title I of the Civil Rights Act of 1991. In Paragraph 9 of the Complaint, the Commission alleged that Tammy Hulce, and a class of employees, including at least Michelle Reid, were subjected to harassment

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based on pregnancy that created a hostile work environment for them because of their sex, female. The Commission also alleged that Michelle Reid was constructively discharged as a result of Defendant's alleged pregnancy harassment toward her because of her sex, female.

The parties to this Consent Decree do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law as to claims made in Paragraph 9 of the Commission's Complaint. This decree does not constitute an admission of liability by the Defendant, nor an adjudication on the merits of the allegations of the complaint and is inadmissible against Defendant in the current or any subsequent proceeding, unless the proceeding is brought to enforce the Decree. Defendant expressly denies liability and enters into this agreement for the purpose of resolving this litigation without further expense or delay.

It is hereby **ORDERED, ADJUDGED AND DECREED:**

1. This decree resolves the claims against Defendant relating specifically to Ms. Hulce, Ms. Reid and any EEOC claims of class pregnancy discrimination that EEOC could have brought against Defendant as a result of its investigation of Tammy Hulce's charge, or Michelle Reid's claims, including claims for back pay, compensatory and punitive damages, interest, injunctive relief, attorney's fees and costs arising out of solely the allegations described in Paragraph 9 of the Commission's Complaint. This Decree does not preclude the Commission from prosecuting its remaining sex discrimination claims against Defendant relating to Marla Segovia and a class of women, including at least Joanne Richmond or Defendant from asserting any defenses claimed in connection with those allegations.

INJUNCTION

2. For the duration of this Consent Decree, Defendant, its managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with them, shall not discriminate against any employee because of pregnancy. This injunction will remain in effect for the duration of this Consent Decree at any facility operated by Defendant in the State of New Mexico.

RELIEF TO CHARGING PARTY AND CLASS

3. Within seven days of the entry of the Consent Decree, Defendant shall pay the amount of \$6,500.00 in compensatory damages to Michelle Reid. This payment will be made by a check made payable to Michelle Reid and will be mailed directly via certified mail to Ms. Reid at the address provided by the EEOC to Defendant.

4. Within five days of issuance of the check described in Paragraph 3, above, Defendant shall submit a copy of the check and related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, Albuquerque, District Office, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189.

5. Within five days of his attendance of the training session(s) regarding pregnancy discrimination described in Paragraph 13 of this Decree, Alva Carter will send Tammy Hulce a letter describing the training he attended and dates of attendance. A copy of Mr. Carter's letter shall also be simultaneously provided to the Regional Attorney, Equal Employment Opportunity Commission, Albuquerque District Office, 505 Marquette NW, Suite 900 Albuquerque, New Mexico 87102-2189.

6. In response to any employment inquiries or reference checks concerning Tammy

Hulce or Michelle Reid, Defendant shall provide only their dates of employment, each position held, and job duties. This provision shall remain in force for so long as either Ms. Hulce or Ms. Reid uses Defendant as a reference and is not limited to the three-year duration of this decree.

7. Defendant will expunge from the personnel files of Tammy Hulce and Michelle Reid all references to Ms. Hulce's charge of discrimination made against Defendant.

8. Defendant shall not take any action to discriminate against or retaliate against Tammy Hulce or Michelle Reid because they opposed any practice made an unlawful employment practice by Title VII, or because they made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VII.

9. Defendant shall not take any action to discriminate against or retaliate against any witness who testified, assisted, or participated in any manner in this case.

DEFENDANTS POLICIES AND PRACTICES

10. Defendant shall institute and carry out policies and practices that foster work environments free from pregnancy discrimination, including policies and practices to prevent pregnancy discrimination in the hiring of employees the firing of employees and all other terms, conditions and privileges of employment. To assist Defendant in its effort to foster a work environment free of pregnancy discrimination, the Defendant shall take the actions provided for in Paragraphs 11 through 13.

11. The Defendant shall review any existing policies on pregnancy discrimination and make any changes necessary so that its policies comply with Title VII and the Pregnancy Discrimination Act. Defendant shall ensure its written policies include a statement that employees have a right to complain directly to the U.S. Equal Employment Opportunity

Commission or any state equal opportunity agency about pregnancy discrimination. After reviewing and making any necessary revisions to its policies, Defendant shall distribute the revised pregnancy discrimination policies to each of its current full and part-time employees in New Mexico, and to each new employee hired for the duration of this decree.

12. Defendant shall post within thirty (30) days of the entry of this Consent Decree, for a period of thirty-six (36) months in a prominent place frequented by its employees in New Mexico, the Notice attached to this Decree as Exhibit A. This Notice shall be the same type, style and size as in Exhibit A.

13. Defendants shall provide training on pregnancy discrimination according to the following terms:

- A. Defendants shall provide at least two training sessions during the term of this Consent Decree. All employees, including managers and supervisors, at all New Mexico facilities owned, operated or managed by defendant, shall attend the training. In addition, as long as Alva Carter retains an ownership interest in Defendant company, he shall be required to attend the training sessions required by this Decree. Duplicative sessions may be held to accommodate staffing needs. Defendant shall be responsible for all costs associated with this training.
- B. During the first year of the Consent Decree, the training shall be conducted within four months of the entry of this decree. Additional training shall be conducted once at least one-hundred-eighty (180) days before the expiration of this Decree.
- C. Defendant shall select a qualified trainer and shall submit the trainer's name, resume, training agenda and the date(s) of the proposed training to the Regional

Attorney of the Albuquerque office of the Equal Employment Opportunity Commission with sixty (60) days of the entry of this Consent Decree. The Commission shall have thirty (30) days from the date of the receipt of the information described above to accept or reject the proposed consultant/lecturer and/or the contents of the seminar. In the event the Commission does not approve of the designated consultant/lecturer proposed by Defendant the Commission shall designate the consultant/lecturer at a cost not to exceed \$500.00 per seminar-training session, which shall be paid by Defendant. During the remaining term of the Consent Decree, the above information concerning the proposed training session shall be submitted to the Regional Attorney at least ninety (90) days prior to the date of the proposed seminar-training session.

- D. The training shall include a minimum of two hours of instruction. All personnel, designated in Paragraph A shall both register and attend the training. The registry of attendance shall be retained by Defendant at least for the duration of the Consent Decree.
- E. The training, at a minimum shall include the subjects of what constitutes pregnancy discrimination, that pregnancy discrimination in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment violates Title VII; that harassment based on pregnancy violates title VII; how to prevent pregnancy discrimination; how to provide a work environment free from pregnancy discrimination, and to whom and by what means employees may complain if they feel they have been subjected to pregnancy discrimination.

- F. Immediately following the training sessions, Defendant's highest ranking managerial official(s) in New Mexico shall speak to the employees about; (1) Potential discipline that can be taken against supervisors, managers and employees who commit acts of pregnancy discrimination or who allow pregnancy discrimination to occur in the workplace; (2) the importance of maintaining an environment free of pregnancy discrimination and (3) the employer's policies regarding pregnancy discrimination. This time shall not be counted toward the two-hour minimum training required in Paragraph 13D. In the event of the need for duplicative or make up training sessions, the Defendant may present the managerial official's remarks by video presentation. All such video presentations shall be copied and supplied to the Commissions in accord with Paragraph 15 of this Consent Decree.
- G. For the duration of this decree, at or around the time of hire, employees hired after the annual training is presented shall view a video tape of the training and/or a professional training tape which covers the topics set forth in Paragraph 13F. And shall be given any written material discriminated at the training.
14. In accordance with this Consent Decree, the Commission, at its discretion, may designate Commission representatives to attend and participate in the training sessions described above.

REPORTING OF COMPLIANCE AND ACCESS BY EEOC

15. Defendants shall report in writing and in affidavit from c/o the Regional Attorney of the Equal Employment Opportunity Commission's Albuquerque District Office at 505

Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189, beginning six months from the date of the Entry of this Consent Decree, and thereafter every six months for the duration of the Consent Decree the following information:

- A. Any substantive changes modifications, revocations, or revisions to its pregnancy discrimination policies and procedures.
- B. The registries of persons attending each of the seminar-training sessions required in Paragraph 13 and a list of current employees for all New Mexico facilities on the day of the seminar-training session(s).
- C. An affidavit from Defendants' highest ranking official(s) in New Mexico stating:
(1) the Notice required in Paragraph 12 was posted and the locations where it was posted and (2) it has complied with Paragraphs 2-13 of this Consent Decree.

16. The Commission shall have the right to enter and inspect the facilities of Defendant in New Mexico to ensure compliance with this decree and federal anti-discrimination laws.

COSTS AND DURATION

17. Each party shall bear its own costs and attorneys' fees incurred as a result of this action through the entry of this Consent Decree.

18. The duration of this Consent Decree shall be three (3) years from the date of its entry. This Court shall retain jurisdiction of this action for the duration of the Consent Decree, during which the Commission may petition this Court for compliance with this Consent Decree. Should the Court determine that Defendant has not complied with this Consent Decree, appropriate relief, including extension of this Consent Decree for such period as may be

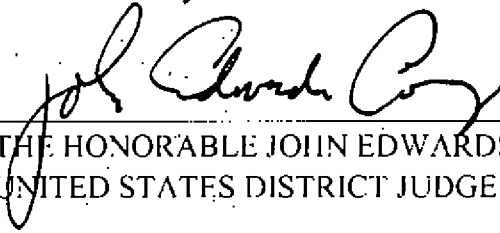
necessary to remedy its non-compliance, may be ordered:

19. Without further action by the parties, this Consent Decree shall expire by its own terms at the end of three (3) years after the date of entry.

20. Upon entry of this Consent Decree, this case, as it relates solely to Ms. Hulce's, Ms. Reid's and the EEOC's class pregnancy claims is dismissed with prejudice.

21. The parties agree to entry of this Consent Decree subject to final approval by the Court.

ENTERED AND ORDERED this 23^d day of April 2004.



THE HONORABLE JOHN EDWARDS CONWAY
UNITED STATES DISTRICT JUDGE


APPROVED AND CONSENTED TO:

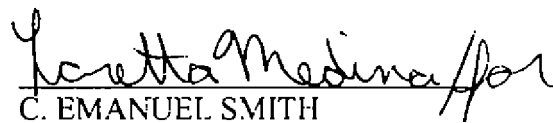
Eric S. Dreiband
General Counsel

James L. Lee
Deputy General Counsel

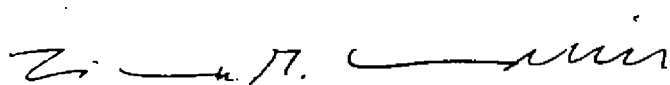
Gwendolyn Young Reams
Associate General Counsel


EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
1801 I. Street, N.W.
Washington, D.C. 20507


MARY JO O'NEILL
Regional Attorney


C. EMANUEL SMITH
Supervisory Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
3300 n. Central Ave., Suite 690
Phoenix, Arizona 85012


LINDA G. HEMPHILL, P.C.
Linda G. Hemphill, Esq.
Stephanie Fuchs, Esq.
834 Dunlap Street (505) 986-8515
Santa Fe, New Mexico 87501
(505) 986-8515


LORETTA MEDINA
Senior Trial Attorney

VERONICA MOLINA
Trial Attorney

Attorneys for Defendant

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Albuquerque District Office
505 Marquette NW, Suite 900
Albuquerque, New Mexico 87102-2189
Telephone: (505) 248-2530

Attorneys for Plaintiff

NOTICE TO ALL EMPLOYEES
PVNF, L.L.C. d/b/a Big Valley

This Notice is posted pursuant to an agreement between PVNF, L.L.C. db/a Big Valley Auto and the Equal Employment Opportunity Commission (EEOC).

It is unlawful under the federal law (Title VII of the Civil Rights Act of 1964) and state law to discriminate against an employee on the basis of pregnancy in, firing, hiring, or other, terms, and conditions or privileges of employment.

PVNF, L.L.C. d/b/a Big Valley Auto ("Employer") prohibits all forms of pregnancy discrimination, including harassment based on pregnancy and the discharge of employees due to pregnancy. The Employer does not discriminate on the basis of pregnancy. The Employer does not retaliate against any employee who opposes a practice made unlawful under federal law, files, assists or participates in the filing of a charge of discrimination in any investigation under Title VII, or who files a grievance alleging discrimination.

If you believe you are being discriminated against or retaliated against you should report this to the designated investigative officer at your workplace who may be contacted at _____.

If you believe you have been discriminated against by your Employer you have the right to seek assistance from:

(1) Equal Employment Opportunity Commission (EEOC), 505 Marquette, Suite 900, Albuquerque, New Mexico 87102, telephone 1-800-669-4000.

or

(2) The New Mexico Department of Labor, Human Rights Division, 1596 Pacheco St., Suite 103, Santa Fe, New Mexico 87505, (505) 827-6838.

You have the right to file a charge with the EEOC or the New Mexico Department of Labor, Human Rights Division if you believe you are being discriminated against.

EXHIBIT A